

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (Use 1-10-05)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

DAVID ALMEIDA, individual, and on behalf of all others similarly situated

DEFENDANTS

GOOGLE, INC., a Delaware Corporation, and DOES 1 through 250, inclusive

(b) County of Residence of First Listed Plaintiff: Essex County, Mass. (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney: FIRM Name, Address, and Telephone

See attachment

Attorney (If known)

C08 02088

HRL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Plaintiff Defendant
 Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☒ 4
 Citizen of Another State ☒ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
 Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instruments 150 Recovery of (1) Payment & (2) Enforcement of Judgment 160 Medical Aid 170 Recovery of (1) Audited Student Loans (Each, Veterans) 180 Recovery of (1) Employment of Veteran's Benefits 190 Stockholders' Suits 200 Other Contract 210 Contract Product Liability 220 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury	PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	410 Agriculture 420 Other Food & Drug 425 Drug Related Seizure of Property 21 USC 881 430 Liquor Laws 440 R.R. & Truck 450 Airline Regs. 460 Occupational Safety/Health 490 Other 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	422 Appen 28 USC 158 423 Withdrawal 28 USC 157 430 State Reapportionment 431 Audits 432 Banks and Banking 433 Commerce 434 Deposition 435 Racketeer Influenced and Corrupt Organizations 436 Consumer Credit 437 Copyright/Sat. TV 438 Selective Service 439 Securities/Commodities Exchange 440 Customer Challenge 12 USC 341b 441 Other Statutory Actions 442 Agricultural Acts 443 Economic Stabilization Act 444 Environmental Matters 445 Energy Allocation Act 446 Freedom of Information Act 447 Appeal of Fee Determination Under Equal Access to Justice 448 Constitutionality of State Statutes
REAL PROPERTY 230 Land Condemnation 240 Foreclosure 250 Rent Lease & Ejectment 260 Torts to Land 270 Tort Product Liability 280 All Other Real Property	CIVIL RIGHTS 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 449 Other Civil Rights	PRISONER PETITIONS 510 Motions to Vacate Sentence 520 Habeas Corpus 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition	LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY 861 TIA (1293(i)) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSD Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS - Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Removed from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 USC sec. 1332(d)(2) and 28 USC sec. 1332(d)(5)

Brief description of cause:

Unjust Enrichment, Fraudulent Concealment, Violation of Calif. Bus. & Prof. Code sec. 17200 et seq.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

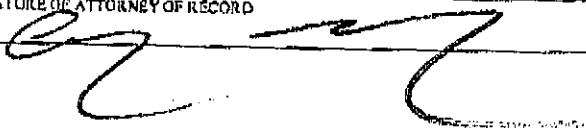
IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE

4/22/2008

SIGNATURE OF ATTORNEY OF RECORD



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ADR

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA, S.J.

E-FILING

Attorneys for Plaintiff
David Almeida

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID ALMEIDA, individually and on
behalf of all others similarly situated,

CASE NO.

008 02088

HRL

Plaintiff,

CLASS ACTION COMPLAINT

vs.

JURY TRIAL DEMANDED

GOOGLE, INC., a Delaware
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

Plaintiff David Almeida ("Plaintiff"), individually and on behalf of the class described below, by his attorneys, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief except as to allegations specifically pertaining to Plaintiff and his counsel, which are based on personal knowledge. Plaintiff brings this action for damages and injunctive relief against defendant, demanding a trial by jury.

CLASS ACTION COMPLAINT

By Fax

NATURE OF THE ACTION

1
2 1. Plaintiff brings this class action against Google, Inc. ("Google") to recover
3 damages and other relief available at law and in equity on behalf of himself as well as on
4 behalf of the members of the following class:

5 *All persons or entities located within the United States who*
6 *bid on a keyword through AdWords, left the "CPC content*
7 *bid" input blank, and were charged for content ads.*

8 2. This action arises from Google's deceptive, fraudulent and unfair practice
9 of tricking advertisers who seek on-line advertising through Google's AdWords program
10 into bidding for a service that they do not want.

11 3. Google is commonly thought simply as an Internet search engine; in fact
12 Google's business is online advertising. Google's business model is primarily dependent
13 on linking individuals who are searching the internet with advertisers who pay Google
14 (and others) for each time the linkage occurs. The Google Network is the largest online
15 advertising network in the United States.

16 4. AdWords is Google's primary advertising program and is the main source
17 of its revenue. Through AdWords, Google permits would-be advertisers to bid on words
18 or phrases that will trigger the advertisers' ads. AdWords is premised on a pay-per-click
19 ("PPC") model, meaning that advertisers pay only when their ads are clicked. As part of
20 the AdWords bidding process, therefore, advertisers must set a maximum cost per click
21 ("CPC") bid that the advertiser is willing to pay each time someone clicks on its ad.
22 When an advertiser is choosing its CPC bid, it is also given the "option" of entering a
23 separate bid for clicks originating from Google's "content network" which consists of
24 sites that are not search engines. These content network sites are those that use AdSense,
25 the other side of the Google advertising model.

26 5. This action arises from the fact that Google does not inform its advertisers
27 that if they leave the content bid CPC input blank, Google will use the advertiser's CPC
28 bid for clicks occurring on the content network. Google does this despite the fact that ads

1 placed on the content network are demonstrably inferior to ads appearing on search result
2 pages. Because there is no option to opt out of content ads during the AdWords
3 registration process, advertisers reasonably believe that by leaving the content ad CPC
4 input blank they can opt out of having their ads placed on the content network. Google,
5 however, has charged and continues to charge those advertisers who leave content ad
6 CPC input blank for content ads on third party websites.

7 **PARTIES**

8 6. Plaintiff David Almeida ("Plaintiff") is a resident of Essex County,
9 Massachusetts and citizen of Massachusetts. Plaintiff has previously registered for an
10 AdWords account as more particularly described herein and has also previously been
11 charged for content ads as more particularly described herein.

12 7. Plaintiff is informed and believes and thereon alleges that defendant
13 Google, Inc. ("Google") is a Delaware Corporation doing business in the state of
14 California. Plaintiff is informed and believes and thereon alleges that there is no one
15 state where Google conducts a substantial predominance of its business, making its
16 principal place of business the state where it is headquartered. Network Solutions'
17 headquarters – and, thus, its principal place of business – are located at 1600
18 Amphitheatre Parkway, Mountain View, California. Accordingly, Defendant Google is a
19 citizen of Delaware and California.

20 8. Plaintiff does not know the true names or capacities of the persons or
21 entities sued herein as DOES 1 to 10, inclusive, and therefore sues such defendants by
22 such fictitious names. Plaintiff is informed and believes and thereon alleges that each of
23 the DOE defendants is in some manner legally responsible for the damages suffered by
24 Plaintiff and the members of the class as alleged herein. Plaintiff will amend this
25 complaint to set forth the true names and capacities of these defendants when they have
26 been ascertained, along with appropriate charging allegations, as may be necessary.

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JURISDICTION AND VENUE

9. This Court has diversity subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d) in that this is a civil action filed under Rule 23 of the Federal Rules of Civil Procedure and members of the class of Plaintiffs are citizens of a State different from defendant Google, and the aggregated amount in controversy exceeds \$5,000,000, exclusive of interest and costs. See 28 U.S.C. § 1332(d)(2), (6).

10. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(a) in that: (1) Google resides in this judicial district; (2) a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district; and (3) Google is subject to personal jurisdiction in the Northern District of California.

FACTUAL BACKGROUND

11. Google offers advertisers two types of ads. The first is a search ad. When an Internet user uses Google to search for a specific term or term, Google will display the ads of advertisers who have bid for those particular keywords. The second type of ad is contextual based ads, or content ads. These ads are shown on third party websites that have content that matches the keywords bid on by the advertiser. For example, an ad for a hardware store may be shown on a website that has content about home improvement projects.

12. In order to advertise with Google, advertisers must register with AdWords, Google's advertising program. The process of registering with AdWords involves an online process that begins by clicking on the "Advertising Programs" link on Google's homepage. After selecting to register with AdWords and the desired version, the advertiser moves to the initial step of the sign-up process. First, the advertiser selects the target language and geographic location. Then, the advertiser creates the ad that will be placed on Google's website or on third party websites and selects the desired keywords. The advertiser then selects the maximum daily budget and the maximum CPC bid. Here,

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1 the advertiser has two choices, the "Default CPC bid" and the "CPC content bid". Next
 2 to the "CPC content bid" input is the word "optional".

3 12. Nowhere on this page, or anywhere in the registration process, is there the
 4 option to opt-out of content ads.

5 13. Advertisers who do not want to pay for ads placed on third party websites,
 6 therefore leave the "CPC content bid" input blank, reasonably believing that the word
 7 "optional" means that having content ads placed on third party websites is optional.

8 14. Google, however, fails to inform that an advertiser who leaves this
 9 "optional" input blank will nonetheless be charged for third party content ads. By
 10 redefining the universally understood meaning of an input form left blank, and then
 11 intentionally concealing this redefinition, Google has fraudulently taken millions of
 12 dollars from Plaintiff and the members of the class.

13 15. Plaintiff enrolled in AdWords in November 2006. Plaintiff created an
 14 advertising campaign for his private investigation business. Plaintiff set the desired bids
 15 for his ads, and, not wanting to pay for ads placed on third part content sites, left the CPC
 16 content bid input blank. Plaintiff, like any reasonable consumer, expected that leaving an
 17 input blank would indicate that he did not want to bid on content ads. This expectation
 18 was supported by the fact that Plaintiff was not given the option of opting out of content
 19 bids during the advertising campaign creation process.

20 16. Despite leaving the CPC content bid input blank, Google charged Plaintiff
 21 for unwanted third party content ads.

22 CLASS ALLEGATIONS

23 13. Description of the Class: Plaintiff brings this nationwide class action on
 24 behalf of himself and the Class defined as follows:

25 *All persons or entities located within the United States*
 26 *who bid on a keyword though AdWords, left the "CPC*
 27 *content bid" input blank, and were charged for content ads.*
 28

1 14. Excluded from the Class are governmental entities, Defendant, any entity in
2 which Defendant has a controlling interest, and Defendant's officers, directors, affiliates,
3 legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns.
4 Also excluded from the Class is any judge, justice, or judicial officer presiding over this
5 matter and the members of their immediate families and judicial staff.

6 15. Plaintiff reserves the right to modify the class description and the class
7 period based on the results of discovery.

8 16. Numerosity: The proposed Class is so numerous that individual joinder of
9 all its members is impracticable. Due to the nature of the trade and commerce involved,
10 however, Plaintiff believes that the total number of class members is at least in the
11 hundreds of thousands and that the members of the Class are numerous and
12 geographically dispersed across the United States. While the exact number and identities
13 of class members are unknown at this time, such information can be ascertained through
14 appropriate investigation and discovery. The disposition of the claims of the Class
15 members in a single class action will provide substantial benefits to all parties and to the
16 court.

17 17. Common Questions of Law and Fact Predominate: There are many
18 questions of law and fact common to the representative Plaintiff and the proposed Class,
19 and those questions substantially predominate over any individualized questions that may
20 affect individual class members. Common questions of fact and law include, but are not
21 limited to, the following:

- 22 a. Whether Google charges for advertisements placed on third party
23 websites when the "optional" CPC content bid input is left blank,
24 and whether Google discloses this material fact to consumers;
25 b. Whether Google failed to disclose that when the "optional" CPC
26 content bid input is left blank, Google will still charge for ads placed
27 on third party websites;
28

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c. Whether or not Plaintiff and the members of the Class have been damaged by the wrongs complained of herein, and if so, the measure of those damages and the nature and extent of other relief that should be afforded;

d. Whether Google engaged in unfair, unlawful and/or fraudulent business practices; and

e. Whether Google failed to disclose material facts about the subject Google Adwords program.

18. Typicality: Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant's common course of conduct since they were charged for ads although they also left the "optional" CPC content bid blank..

19. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex and class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interests adverse to those of the proposed Class.

20. Superiority of a Class Action: Plaintiff and the members of the Class have suffered, and will continue to suffer, harm as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy as individual joinder of all members of the Class is impractical. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of

1 all class members' claims in a single forum. The conduct of this action as a class action
 2 conserves the resources of the parties and of the judicial system, and protects the rights of
 3 the class member. Furthermore, for many, if not most, Class members, a class action is
 4 the only feasible mechanism that allows an opportunity for legal redress and justice.

5 21. Adjudication of individual Class members' claims with respect to the
 6 Defendant would, as a practical matter, be dispositive of the interests of other members
 7 not parties to the adjudication and could substantially impair or impede the ability of
 8 other Class members to protect their interests.

9 10 FIRST CAUSE OF ACTION

11 UNJUST ENRICHMENT

12 22. Plaintiff realleges the preceding paragraphs as if fully set forth herein and,
 13 to the extent necessary, pleads this cause of action in the alternative.

14 23. Through the actions described above, Google has received money
 15 belonging to Plaintiff and the Class through the fees collected from ads placed on third
 16 party content sites when a reasonable advertiser would have believed that leaving the
 17 CPC content bid input blank meant that they would not be charged for content ads.

18 24. Additionally, Google has reaped substantial profit by concealing the fact
 19 that when left blank, the "optional" CPC content bid would be set at an amount that could
 20 reach the amount bid for the search bid. Ultimately, this resulted in Google's wrongful
 21 receipt of profits and injury to Plaintiff and the Class. Google has benefited from the
 22 receipt of such money that it would not have received but for its concealment.

23 25. As a direct and proximate result of Google's misconduct as set forth above,
 24 Google has been unjustly enriched.

25 26. Under principles of equity and good conscience, Google should not be
 26 permitted to keep the full amount of money belonging to Plaintiff and the Class which
 27 Google has unjustly received as a result of its actions.

28 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

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SECOND CAUSE OF ACTION
FRAUDULENT CONCEALMENT

27. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

28. Google knew at all material times that when an advertiser left the "optional" CPC content bid input blank, that advertiser would still be charged for content ad placed on third party websites. These facts were not known to Plaintiff and the Class.

29. Google had a duty to disclose the above known material facts because it knew that these material facts were unknown to Plaintiff and the Class, that Google was in a superior position of knowledge with regard to its own technology, and Google chose to make certain representations that presented only a part of the true story and misled consumers about the subject products.

30. Google's knowledge that advertisers would be charged for content ads placed on third party websites even when they left the "optional" CPC content bid input blank, combined with Google's knowledge that Plaintiff and the Class relied or relies upon Google to communicate the true state of facts relating to its AdWords program creates a legal obligation on Google's part to disclose to Plaintiff and the Class that leaving the "optional" CPC content bid input blank did not mean that they were not subject to charges for ads placed on third party websites.

31. Google intentionally concealed and/or suppressed the above facts with the intent to defraud Plaintiff and the Class.

32. Plaintiff and the Class were unaware of the above facts and would not have acted as they did if they had known of the concealed material facts.

33. Google's concealment of the above facts has caused damage to Plaintiff and the Class in an amount to be shown at trial.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

THIRD CAUSE OF ACTION

**VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE
SECTIONS 17200 ET SEQ.**

34. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

35. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and have lost money or property as a result of Google's actions as delineated herein.

36. Class members have suffered injury in fact and have lost money or property as a result of Google's actions as delineated herein.

37. Google's actions as alleged in this complaint constitute an unfair or deceptive practice within the meaning of California Business and Professions Code sections 17200 *et seq.* in that Google's actions are unfair, unlawful and fraudulent, and because Google has made unfair, deceptive, untrue or misleading statements in advertising media, including the Internet, within the meaning of California Business and Professions Code sections 17500 *et seq.*

38. Google's business practices, as alleged herein, are unfair because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers in that consumers are not informed that they will be charged for ads placed on third party websites even though the "optional" CPC content bid input was left blank.

39. Google's business practices, as alleged herein, are unlawful because the conduct constitutes fraudulent concealment, as well as the other causes of action herein alleged.

40. Google's practices, as alleged herein, are fraudulent because they are likely to deceive consumers.

41. Google's wrongful business acts alleged herein constituted, and constitute, a continuing course of conduct of unfair competition since Google is marketing and selling their products in a manner that is likely to deceive the public.

42. Google's business acts and practices, as alleged herein, have caused injury to Plaintiff, the Class and the public.

43. Pursuant to section 17203 of the California Business and Professions Code, Plaintiffs and the class seek an order of this court enjoining Google from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those acts set forth in the complaint. Plaintiff and the Class also seek an order requiring Google to make full restitution of all moneys it wrongfully obtained from Plaintiff and the Class.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the proposed Class request that the court enter an order or judgment against Defendant as follows:

1. Certification of the proposed Class and notice thereto to be paid by Defendant;
2. Adjudge and decree that Defendant has engaged in the conduct alleged herein;
3. For restitution and disgorgement on certain causes of action;
4. For an injunction ordering Defendant to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. For compensatory and general damages according to proof on certain causes of action;
6. For special damages according to proof on certain causes of action;
7. For both pre and post-judgment interest at the maximum allowable rate on any amounts awarded;
8. Costs of the proceedings herein;
9. Reasonable attorneys fees as allowed by statute; and

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10. Any and all such other and further relief that this Court may deem just and proper.

Dated: April 22, 2008

KABATECK BROWN & KELLNER, LLP

By:

BRIAN S. KABATECK
RICHARD L. KELLNER
ALFREDO TORRIJOS

Attorneys for Plaintiff and proposed class

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in the instant action.

Dated: April 22, 2008

KABATECK BROWN & KELLNER, LLP

By:


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